

No. 1990-174

## AN ACT

SB 1366

Amending Title 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, extending the period of existence of the Pennsylvania Veterans' Memorial Commission; further providing for leaves of absence and for employment discrimination involving military status of members of the Pennsylvania National Guard and other reserve components of the armed forces of the United States; and further providing for powers and duties of the Department of Military Affairs relating to employment discrimination.

The General Assembly finds and declares as follows:

(1) It is the intention of the General Assembly, as a matter of public policy, to reaffirm the support of this Commonwealth for members of the National Guard and other reserve components of the armed forces of the United States.

(2) The General Assembly recognizes that today's National Guard and reserve component forces are essential elements of our nation's total force for national defense and that members of the National Guard and other reserve components of the armed forces of the United States may be called or ordered to active duties in support of a wide variety of military contingencies and operations throughout the world.

(3) The General Assembly recognizes that the Pennsylvania National Guard provides vital support for this Commonwealth by constituting a well-trained, equipped and disciplined military force to respond to emergencies and other contingencies within this Commonwealth.

(4) The General Assembly finds and declares that the laws of this Commonwealth, providing support for the National Guard and other reserve components of the armed forces of the United States, should be updated in light of the current duties and responsibilities of the National Guard and reserve component forces as part of the total force.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 702 and 902 of Title 51 of the Pennsylvania Consolidated Statutes are amended by adding paragraphs to read:

§ 702. Duties of department.

The department shall have the power and its duty shall be:

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*(12) To investigate the circumstances and adjudicate in accordance with Title 2 (relating to administrative law and procedure) complaints of violations of Chapters 41 (relating to rights and immunities) and 73 (relating to military leave of absence), including complaints of employment discrimination against and violation of reemployment rights of members of the National Guard and other reserve components of the armed forces of the United States. The authority granted in this paragraph shall not extend*

*to those circumstances that the Federal Government has jurisdiction to investigate.*

§ 902. General powers and duties of Adjutant General.

The Adjutant General as head of the department is responsible to the Commonwealth and to the Governor for the organization and functioning of said department, and the performance and carrying out of all the duties, powers and responsibilities given or delegated. In addition he is hereby authorized and directed to:

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*(13) Approve issuance of a policy or policies of group life insurance to an association or associations to cover members of the Pennsylvania National Guard.*

Section 2. Section 1906 of Title 51 is amended to read:

§ 1906. Expiration of chapter.

This chapter shall expire on [December 31, 1990] *June 30, 1992.*

Section 3. Title 51 is amended by adding a section to read:

§ 3105. *Association group life insurance for Pennsylvania National Guard.*

*The Adjutant General may approve issuance of group life insurance to nonprofit membership associations for members of the Pennsylvania National Guard, subject to the following requirements:*

*(1) The members eligible for insurance under the policy shall all be members of the Pennsylvania National Guard or their spouses or dependents. A member of the Pennsylvania National Guard who becomes insured under this program while a member may continue the insurance, including group term life insurance, after discharge or retirement from the Pennsylvania National Guard.*

*(2) The premium for the policy shall be paid by the individual members of the Pennsylvania National Guard or their spouses or dependents who elect to participate in the insurance plan either by direct payment or by allotment from military pay. An individual family member may insure his spouse or dependent without their signature or approval.*

*(3) The policy must cover at least 25 members of the Pennsylvania National Guard at the time of issue.*

*(4) The amounts of insurance under the policy must not exceed \$100,000 per individual insured member and \$25,000 per insured spouse or dependent.*

*(5) Participation in the insurance plan must be voluntary.*

*(6) Except as otherwise provided by this section, the policy or policies must comply with the provisions of the act of May 11, 1949 (P.L.1210, No.367), referred to as the Group Life Insurance Policy Law, and be approved by the Insurance Commissioner and the Adjutant General.*

*(7) The same policy can be made available to any Pennsylvania resident who is a member of a reserve component of the armed forces.*

Section 4. Sections 4102 and 7302 of Title 51 are amended to read:

§ 4102. Leaves of absence for certain government employees.

*(a) Mandatory.*—All officers and employees of the Commonwealth, or its instrumentalities, or any political subdivision thereof, or its instrumental-

ities, who are [commissioned or enlisted] members of the Pennsylvania National Guard, shall be entitled to leave of absence from their respective duties without loss of pay, time or efficiency rating on all days during which they shall, as members of the Pennsylvania National Guard, be engaged in active State duty. All such officers and employees shall, *in addition*, be entitled to leave of absence from their respective duties without loss of pay, time or efficiency rating on all days not exceeding 15 days in any one year during which they shall, as members of the Pennsylvania National Guard, be engaged in training or other military duty under orders authorized by law. *All such officers and employees shall, in addition, be entitled to unpaid leave of absence from their respective duties without loss of seniority or efficiency rating on all days in excess of 15 days per year during which they shall be engaged in training or other military duty under orders authorized by law.*

*(b) Discretionary.—The Commonwealth, its instrumentalities and political subdivisions thereof and their instrumentalities shall be authorized and permitted to provide paid military leave or other compensation and/or continue medical and other benefits to members of the Pennsylvania National Guard and other reserve components of the United States Armed Forces for days in excess of 15 per year when the member shall be engaged in training or other military duty under orders authorized by law.*

§ 7302. Granting military leaves of absence.

*(a) Enlistment or draft.—Whenever any employee shall, in time of war or armed conflict, or emergency proclaimed by the Governor or by the President of the United States, enlist or shall, at any time, be drafted into the active military service of the United States, he shall be automatically granted a military leave of absence. So long as an employee is on military leave of absence, he shall not be removed from his employment and his duties shall either be performed by other employees or by a temporary substitute. During such time he shall not receive any remuneration from his civilian employer.*

*(b) Reserve components.—Whenever any employee who is a member of a reserve component of the armed forces shall be called or ordered to active duty by the United States and whenever any employee who is a member of the Pennsylvania National Guard shall be ordered to active State duty or special State duty by the Governor or his designee, he shall automatically be granted a military leave of absence.*

Section 5. Section 7303 of Title 51 is amended by adding a subsection to read:

§ 7303. Expiration of military leaves of absence.

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*(c) Employees who were members of reserve components.—Every military leave of absence granted to an employee by reason of his having been called or ordered to military duty as a member of a reserve component of the armed forces of the United States shall expire 90 days after the expiration of the period of the military duty. Every military leave of absence granted to an employee by reason of his having been ordered to active State duty or special State duty as a member of the Pennsylvania National Guard shall expire 30 days after the expiration of the period of the State duty.*

Section 6. Section 7309 of Title 51 is amended to read:

§ 7309. Employment discrimination for military membership or duty.

(a) General rule.—It is unlawful for the Commonwealth or any of its departments, boards, commissions, agencies or any political subdivision, or for any private employer, to refuse to hire or employ any individual not on extended active duty because of his membership in the National Guard or any one of the *other* reserve components of the armed forces of the United States, or because he is called *or ordered* to active State duty *or special State duty* by the Governor during an emergency *or as otherwise authorized by law, or because he is called or ordered to active duty by the Federal Government under provisions of 10 U.S.C. (relating to armed forces) or 32 U.S.C. (relating to National Guard)*, or to discharge from employment such individual, or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment because of such membership, or because he is called *or ordered* to active State duty by the Governor during an emergency *or because he is called or ordered to other military duty authorized by law*.

(b) Reemployment following emergency *or other military* duty.—Upon the completion of such emergency *or other military* duty any such member of the Pennsylvania National Guard *or any other reserve component of the armed forces of the United States* shall be restored by such *public or private* employer or his successor in interest to such position or to a position of like seniority, status and pay which such member held prior to such emergency *or other military* duty, but if any such member is not qualified to perform the duties of such position by reason of disability sustained during such emergency *or other military* duty but qualified to perform the duties of any other position in the employ of such private employer or his successor in interest, such member shall be restored to such other position, the duties of which he is qualified to perform, as will provide him like seniority, status and pay, or the nearest approximation thereof consistent with the circumstances of the case, unless such *public or private* employer's or his successor in [interest] *interests*, circumstances have so changed as to make it impossible or unreasonable to do so.

(c) *Extension of benefits during military duty.—Whenever a member of the Pennsylvania National Guard is called or ordered into active Federal service or active State duty under orders authorized by law or a member of any reserve component is called or ordered onto active duty, other than active duty for training, the public or private employer of the member shall, at no cost to the member, continue health insurance and other benefits in effect for at least the first 30 days of the military duty. After the expiration of the first 30 days, the public or private employer shall give the member of the National Guard or other reserve component the voluntary option of continuing such health insurance and other benefits in effect at his own expense by paying for the insurance or benefits at the same rates paid by the employer, and the insurance coverage shall continue, except for injuries incurred in the line of military duty.*

Section 7. Title 51 is amended by adding sections to read:

**§ 7312. Stay of eviction or distress during military service.**

(a) *General rule.*—Whenever any member of the Pennsylvania National Guard or other reserve component of the armed forces of the United States shall be called or ordered to active duty, other than active duty for training, or, in the case of members of the Pennsylvania National Guard, shall be called or ordered to active State duty, no eviction or distress shall be made of premises occupied chiefly for dwelling purposes by the member or any member of his family or other dependents, except upon leave of court granted upon application therefor or granted in an action or proceeding affecting the right of possession.

(b) *Stay of proceedings.*—On any such application or in any action brought pursuant to subsection (a), the court may, in its own discretion, on its own motion, and shall, on application of the member of the Pennsylvania National Guard or other reserve component of the armed forces of the United States, any member of his family or dependent, stay the proceedings for six months unless, in the opinion of the court, the ability of the tenant to pay the agreed rent is not materially affected by reason of the military service. The court may make such other order as may be just under the circumstances, including an order temporarily adjusting the rental payments.

(c) *Impacts on landlords.*—When a stay of eviction is granted or other order is made by the court, the owner of the premises shall be entitled, upon application therefor, to such relief as the court may determine just and equitable under the circumstances, including an order for the member to pay the arrearage in rent upon release from military duty to the extent and for such period as may appear to the court to be just.

**§ 7313. Educational leave of absence.**

Whenever any member of the Pennsylvania National Guard or other reserve component of the armed forces of the United States shall be called or ordered to active duty, other than active duty for training, including, in the case of members of the Pennsylvania National Guard, active State duty, the educational institution in which the member is enrolled shall grant the member a military leave of absence from their education. Persons on military leave of absence from their educational institution shall be entitled, upon release from military duty, to be restored to the educational status they had attained prior to their being ordered to military duty without loss of academic credits earned, scholarships or grants awarded or tuition and other fees paid prior to the commencement of the military duty. It shall be the duty of the educational institution to refund tuition or fees paid or to credit the tuition and fees to the next semester or term after the termination of the educational military leave of absence at the option of the student.

**§ 7314. Stay of proceedings when military service affects conduct thereof.**

At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within 60 days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided

*in the act of October 17, 1940, known as the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178, 50 U.S.C. app. § 501 et seq.), unless, in the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service.*

Section 8. This act shall be retroactive to August 1, 1990.

Section 9. This act shall take effect immediately.

APPROVED—The 17th day of December, A. D. 1990.

ROBERT P. CASEY